

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

GONZALO and BLANCA
LINARES

v.

US BANK NATIONAL
ASSOCIATION, et al.

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C.A. No. 16-481S

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

Pending before me for a report and recommended disposition (28 U.S.C. § 636(b)(1)(B)) is Defendants' Motion to Dismiss Plaintiffs' Amended Complaint. (Document No. 2). Plaintiffs oppose the Motion. (Document No. 9). A hearing was held on January 20, 2017.

Background

Plaintiff Gonzalo and Blanca Linares initiated this legal action in Rhode Island Superior Court on December 16, 2014 seeking to enjoin foreclosure of their personal residence. On May 15, 2015, the Superior Court enjoined the foreclosure, as well as other similarly situated foreclosures, based on the failure of the mortgagee to comply with a then-applicable state law pre-foreclosure mediation requirement set forth in R.I. Gen. Laws § 34-27-3.2. See Fontaine v. US Bank Nat'l Ass'n, No. PC 2015-1043, 2015 WL 2449536 (R.I. Super. May 15, 2015). After the state mediation statute was amended in 2015 to exclude mortgages such as Plaintiffs' that were in default on or before May 16, 2013, see R.I. Gen. Laws § 34-27-3.2, as amended by P.L. 2015, ch. 155, § 1, Plaintiffs amended their Complaint to drop the direct state statutory claim and to assert state common law claims of breach of contract and the covenant of good faith and fair dealing (Counts I and II), and federal claims under the Truth In Lending Act, 15 U.S.C. § 1601,

et seq. (“TILA”) and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (“FDCPA”) (Counts III and IV). (Document No. 1-2). Based on the addition of the new federal claims, Defendants timely removed the case to this Court. 28 U.S.C. § 1446(b)(2)(A).

In the Amended Complaint, Plaintiffs sue (1) US Bank National Association, as Trustee for the Holders of the Specialty Underwriting and Residential Finance Trust, Mortgage Loan Asset-backed Certificates, Series 2006-BC4; (2) Nationstar Mortgage, LLC; and (3) John Doe, Alias. Plaintiffs allege that US Bank “claims to own Plaintiffs’ mortgage” but there is no entity with that name, only a securitized trust, of which US Bank is the Trustee. (Document No. 1-2 at ¶ 5). As to Nationstar, Plaintiffs allege that it is a debt collector that obtained the servicing rights to Plaintiffs’ mortgage, effective April 1, 2014. Id. at ¶ 6. Finally, they sue John Doe who is alleged to be the “actual owner of Plaintiffs’ mortgage and note.”¹ Id. at ¶ 7. Plaintiffs’ state law claims (Counts I and II) are brought against all Defendants. The TILA claim (Count III) appears to be brought against Defendant John Doe and “any other entity which claims to own and hold the Plaintiffs’ note and mortgage.” Id. at ¶ 38. The FDCPA claim (Count IV) is brought only against Defendant Nationstar.

Discussion

Defendants move to dismiss Plaintiffs’ Amended Complaint in its entirety. This case was removed to this Court on the same day as Pemental v. The Bank of New York Mellon, as Trustee, and Nationstar Mortg., LLC, et al., Case No. 1:16-cv-00483-S-PAS. The Pemental Amended Complaint is substantively identical to the Amended Complaint in this case and contains the same legal claims.² In addition, the factual allegations are generally parallel, and the claims arise out of the Fontaine Superior Court decision on consolidated cases including this

¹ Plaintiff alleges that, on June 12, 2016, they executed a mortgage to MERS (Mortgage Electronic and Registration Systems, Inc.) as Nominee for Wilmington Finance, Inc. and a promissory note to Wilmington.

² The same attorneys are involved in both cases for the plaintiff(s) and defense.

case and the Pemental case. See Fontaine v. US Bank Nat'l Ass'n, 2015 WL 2449536 (R.I. Super. May 15, 2015) (consolidated decision). Finally, the defendants in the Pemental case filed a Motion to Dismiss the Amended Complaint raising the same legal arguments asserted against the Amended Complaint in this case. (See Document No. 2-1 in Case No. 1:16-cv-00483-S-PAS). The only exception is that the defendants in Pemental made an additional argument in the alternative for a more definite statement as to Counts III and IV. Id. at pp. 13-15.

On May 10, 2017, after full briefing and argument, Magistrate Judge Sullivan issued a Report and Recommendation on Defendants' Motion to Dismiss Plaintiff's Amended Complaint. (See Document No. 14 in Case No. 1:16-cv-00483-S-PAS). As discussed, such Motion involved the same legal attacks on the same legal claims presented in this case on generally parallel factual allegations. In her Report and Recommendation, Judge Sullivan recommended that Defendants' Motion to Dismiss be granted, but with leave to file a further amended complaint within thirty days. As to Counts I and II, Judge Sullivan concluded that the plaintiff had not sufficiently stated any plausible contract claims or damages. As to Count III, she concluded that the plaintiff's TILA claims are "doomed by their vague and conclusory nature and their lack of plausibility, particularly in light of the reality that the loan has long since been discharged [in bankruptcy]." (Document No. 14 at p. 13 in Case No. 1:16-cv-00483-S-PAS). She further reasoned that the TILA claims should be dismissed because they were technically, as here, asserted only against a John Doe defendant and due to the absence of any plausible injury-in-fact. Finally, as to Count IV, Judge Sullivan determined that the FDCPA claims were vague and relied on bald conclusions without plausible facts to support them, rendering them insufficient to meet the Twombly/Iqbal pleading standard.

After closely reviewing Judge Sullivan's Report and Recommendation in Pemental in the context of the pleadings and arguments set forth in this case, I find her reasoning to be thorough, legally supported and persuasive, and equally applicable in this case. Accordingly, I adopt her recommended disposition and supporting rationale in their entirety.

Conclusion

For the foregoing reasons, I recommend that Defendants' Motion to Dismiss Plaintiffs' Amended Complaint (Document No. 2) be GRANTED subject to affording Plaintiffs leave to amend their Complaint, within thirty days of the adoption of this Report and Recommendation, in a good faith attempt to remedy the deficiencies outlined in detail in Judge Sullivan's pending Report and Recommendation in the Pemental case, Case No. 1:16-cv-00483-S-PAS and adopted herein.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
May 16, 2017